

Remarks

In the present application, Claims 1 and 3-26 are pending and rejected.

By this amendment, claims 1, 3-5, 11, 16-17, 22 and 26 have been amended and new claims 27-30 have been added. No new matter has been added to the prosecution of this application. For at least the reasons stated below, Applicant asserts that all claims are in condition for allowance.

I. Rejections under 35 U.S.C. § 112.

In the July 31, 2007 Office Action, all pending claims were rejected under 35 U.S.C. § 112. Initially, claims 1, 4-6, 8-14 and 26 were rejected under 35 U.S.C. § 112 as lacking antecedent basis for "national traffic index data". In response, Applicant has amended claims 1 and 26 to universally refer to national retail traffic index data. Applicant submits that this amendment satisfies the necessary antecedent basis concerns and requests withdrawal of this rejection.

In addition to the above, claims 1 and 3-26 were rejected under 35 U.S.C. § 112 as failing to comply with the written description requirement. Simply stated, the Examiner has asserted that certain subject matter within the claims is not disclosed within the written description. For the reasons outlined below, Applicant respectfully disagrees and asserts that the written description does contain sufficient disclosure.

With regard to claims 1, 3 and 16, the Examiner asserted that "non-traffic related data" is not found in the original specification or claims. The Examiner has further stated that it was not clear what the limitation means. In response, Applicant directs the Examiner to Fig. 3, and the related text on pages 8 and 9 which discusses a considerable amount of information all related to profiles and other relevant data which is monitored and utilized by the system. Further, Fig. 1 and its related discussion specifically lists the collection of POS/sales data, labor data, casual/weather data, etc. All of this information collected and

monitored by the system of the present invention can be utilized to create the desired index or comparison and is all non-traffic related. As such, Applicant submits that the idea of non-traffic related data is sufficiently disclosed and is described throughout the application.

Applicant also refers to the original claims which reference "business data". For sake of completeness and general understanding, the claims listed above utilize the term "non-traffic business related data" to encompass what was originally described simply as business data. Given the context of the claimed invention, and the discussion of traffic and non-traffic related data in the present application, Applicant requests reconsideration and withdrawal of this rejection under § 112.

In addition to the foregoing, the Applicant submits that non-traffic business related data is more fully described when considered in the context of the remaining dependent claims. Clearly, claims 4-7, 17 and 18 all outline specific details regarding the potential types of information included in the non-traffic business related data. In this context, and in the context of the remaining description, Applicant submits that one skilled in the art would clearly understand the meaning of the non-traffic business related data as set forth in the claims.

Claim 3 was also rejected under 35 U.S.C. § 112 for allegedly containing limitations not found in the original specification or claims. Specifically, the idea of "the calculated indexes determined based upon both pedestrian traffic data and non-traffic data using a plurality of predetermined formula" was alleged not to be found in the specification. The Examiner also suggests that it is not known what this limitation means.

While Applicant respectfully disagrees with the Examiner's conclusion, claim 3 has also been amended to more clearly set forth this claim limitation. In addition to this clarifying amendment, the Applicant directs the Examiner to page 15, lines 17-29, which discuss the calculation of indexes as contemplated by the present invention. As such,

Applicant submits that presently presented claim 3 meets the requirements of 35 U.S.C.

§ 112. Withdrawal of this rejection is respectfully requested.

Claim 16 was further rejected under 35 U.S.C. § 112 for allegedly including subject matter not disclosed in the original specification. More specifically, the Examiner asserted that the steps of utilizing a "plurality of predetermined parameters selectable by a user and the request includes a set of user selected parameters" and "wherein the national retail traffic index data is calculated by the processor according to a plurality of stored formulas using the data stored in the pedestrian traffic database and the at least one non-traffic database according to the user selected parameters" were not found in the original specification. Once again, the Examiner has stated that it is not clear what these limitations mean.

In response, Applicant has modified claim 16 for clarity purposes. Despite this modification, Applicant asserts that the listed claim terms are well defined and understandable by one skilled in the art. Page 15, lines 17-29 of the specification discuss the concept of index calculation and provide certain examples. In this particular excerpt, the Applicant specifically outlines one particular type of index which enables a user to compare pedestrian traffic at her store to pedestrian traffic at other similarly situated stores. This ability is created by the user's selection of appropriate parameters, thus providing processors the capability to produce the requested comparison. Another specific index relates to peak comparisons which compare the peak number of visitors at a store type or location according to certain times of day. Again, this illustrates instances where user selectable parameters are valuable.

Lastly, claim 26 was rejected based upon the phrase "and may manipulate it to create a user relevant national traffic index." More specifically, the Examiner asserted that this was not found in the original specification and it was not clear what this meant. Again,

Applicant disagrees and references the general discussion outlined above related to index generation. In addition, certain amendments to claim 26 have been made to further clarify the claimed term. As support for this claimed concept, page 15, lines 17-29 specifically outline one example of the data manipulation involved. For those reasons, Applicant submits that this claim limitation is likewise clear and understandable.

For the reasons outlined above, Applicant submits that the presently presented claims meet the requirements of 35 U.S.C. § 112. Applicant requests that each of these rejections be withdrawn.

II. The Generation of National Retail Traffic Index Data

As set forth in the specification, the present invention provides a system and method to generate national retail traffic index data and use that data to analyze business activities. Once generated, this traffic index data provides a measure or indication related to the traffic at the site being monitored, often relative to similar national traffic data. This measure or indication includes some component of pedestrian traffic data, but also incorporates non-traffic business related data. Generating the traffic index data in this manner provides a metric which allows users to analyze or judge a particular site or location by comparing this data with data from other locations. The generation of this index data is discussed in the specification along with previous correspondence, and for simplicity is not repeated here.

III. The § 103 Rejections

Claims 1, 3-8, 12, 19 and 23-26 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Conrad et al. (U.S. Patent Number 5,465,115), in view of Fox et al. (U.S. Patent Number 5,832,456), and Sneeringer (U.S. Patent No. 6,618,709). Due to a lack of appropriate teaching, Applicant submits that these rejections are unsupported and inappropriate.

In summary, the Examiner asserts that: (1) Conrad shows *a pedestrian traffic indexing system comprising a plurality of traffic monitors at a plurality of provider sites, a server connected to said traffic monitors to receive traffic data . . . ; a traffic database for storing said pedestrian traffic data; displaying pedestrian traffic count; and a communications connection*; (2) Fox et al. discloses *at least one database for storing non-traffic related data; generating national retail traffic index data by processing data stored in the at least one database for storing non-traffic related data; and a national retail traffic index data mart for storing the national retail traffic index data; in an analogous art for purposes of weather adapted business performance forecasting*; and (3) Sneeringer shows *a data communications connection for transferring and accessing databases in an analogous art for purpose of web based monitoring of energy related usage, and client accessibility thereof*. See Office Action, pp. 6-7. In light of this alleged teaching, the Examiner concludes that it would have been obvious to a person of ordinary skill in the art at the time of the invention was made to modify Conrad's functions of video monitoring for retail with Fox's functions of viewing and forecasting of business performance and Sneeringer's functions of web based monitoring.

Applicant again submits that the listed references do not provide sufficient teaching to support the Examiner's conclusion. The teaching within these references would not reasonably lead one skilled in the art to develop the invention outlined in the above claims. Thus, the rejections under 35 U.S.C. § 103 are unfounded and should be removed.

As further outlined below, the cited references do not produce calculated national traffic index data that is made available to users via a data mart. More specifically, the cited references do not produce traffic index data that is based upon data received from multiple locations, which allows for the calculation of "national" data. Further, the references do not suggest the use of a plurality of different data types, including traffic data

and non-traffic data to allow for comparisons and analysis of "national" retail traffic index data based on multiple factors. This is made clear by reviewing each of the cited references.

Conrad et al. Simply Provides Counting

As previously indicated, Conrad et al. does relate to traffic monitoring for retail establishments. Simply stated, Conrad et al. describes one method and approach for monitoring pedestrian traffic, as people move into and out of an establishment. As set forth in the above claims, the monitoring of pedestrian traffic and the creation of traffic data is clearly one element of the claims. In the specification, the Applicant contemplated the use of Conrad et al. as one potential device or method for monitoring pedestrian traffic. See, specification, p. 5, lines 14-17; p.7, lines 7-9. However, Conrad et al. is configured to simply produce traffic counts and either communicate or store this information. As conceded by the Examiner, many remaining elements are clearly omitted from the teaching of Conrad et al.

Fox et al. Does not Provide Sufficient Teaching

The Examiner has cited Fox et al. as teaching other elements related to traffic monitoring systems. While Fox et al. generally relates to retail activities, its concepts and teachings are simply much different than that of the present invention. More specifically, Fox et al. is specifically directed towards the correlation of weather data with business forecasting activities. Fox et al. attempts to establish a correlation between historical sales data and weather data. If a correlation exists, this is then used to generate sales forecasts using existing weather forecasts. See *Fox et al.*, col. 6, lines 18-34. Some of this business forecasting involves the monitoring of customer activity (i.e., purchases). Fox et al., however, does not involve the monitoring of traffic data for specific purposes of creating national index data which is available to users via a data mart. For example, Fox et al. does

not deal with the correlation of national data to individual user data. As Fox is pulling all sales from a single store or company, and not a broad range of information providers, the abilities are limited. Simply stated, Fox et al. does not produce calculated index data, as contemplated by the claims of the present invention.

Sneeringer is Not Applicable

As outlined by the Examiner, Sneeringer is related to the monitoring of energy consumption by individuals so that educated energy purchases can be made. Clearly, this is not in any way related to the monitoring of retail traffic, and the development of a national retail traffic index, as contemplated by the present invention.

The Sneeringer invention is based upon a customer's ability to purchase power from multiple sources. See, column 2, lines 40-43. The invention, thus provides an Internet based platform providing energy management information and/or service to customers, be it commercial, industrial, and/or residential. Based upon this information, these customers can then make educated purchases, and attempt to bargain for their energy consumption needs.

At best, Sneeringer provides an example of monitoring used for predictive purposes. This monitoring however, is not used to create any type of calculated measure of a particular energy user. Further, the monitoring of Sneeringer relates to energy alone, no additional data is considered.

The Claimed Invention is Not Obvious

Again, the concept of the present invention initially relates to the generation and storage of both a traffic database and a non-traffic database. This information is obtained from a number of information providers, thus providing a broad data source for desired analysis and comparison. National retail traffic index data can then be generated, based on this broad spectrum of information, which includes calculated indexes based upon

predetermined formulas and algorithms carried out by appropriate computer systems. This index data is made available at a data mart, which is accessible by users. As stated in the specification, the index data is a comprehensive overview of nation wide retail traffic information. The claimed invention utilizes many necessary inputs to calculate this national retail traffic index. See specification, p.4, lines 23-36. As outlined above, this concept is not taught or suggested by any of the references.

Further, given the diverse nature of the various references, it is pure speculation to suggest that the cited references would render obvious the present invention. As discussed above, each cited reference is primarily related to a very different focus. Fox et al. is related to sales data, and weather, but not to the creation of index data. Further, Fox et al. is related to the data analysis and forecasting for a particular location or set of businesses. This is very different from the national data analysis of the claimed invention. While providing an interesting concept, it is not specifically relevant to the present invention. As previously discussed, Applicant asserts that Sneeringer is clearly unrelated as it is entirely related to energy consumption. Applicant cannot agree that this should be considered "analogous art", given the subject matter of the presently claimed invention.

In addition to the details discussed above, the application includes several dependent claims containing details not disclosed in the cited references. Specifically, these details specify that the databases for non-traffic related data are: a demographics database for storing census demographics, a profiles database for storing site profiles (associated to a set of provider sites) and corporate profiles (associated to a set of corporations), and a customer database for storing sales data. When combined with the details of the independent claims, these details further differentiate the present invention from the prior art.

The Jannarone Reference Does Not Support Obviousness Conclusion

In addition to the above-referenced rejections, the Examiner has rejected claims 9-11 and 20-22 as unpatentable over Conrad et al. in view of Fox et al., Sneeringer and Jannarone. In summary, the Examiner asserts that these claims are obvious in light of the teaching in the cited references.

Claims 9-11 and 20-22 are all dependent claims, thus the comments outlined above apply equally here. In addition, the Applicant submits that the addition of Jannarone does not render these claims obvious.

In the context of a system for producing traffic index data, the use of a "concurrent learning information processor" appears very unrelated. As such, Applicant submits that the inclusion of Jannarone does not suggest the straight forward creation of the claimed features. When combined with the features of the independent claims, allowable subject matter is claimed.

IV. Consideration of Claims is Appropriate

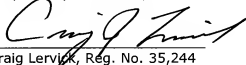
In the Final Office Action, the Examiner has responded to Applicant's arguments by indicating that additional search and consideration is necessary based upon Applicant's previous amendments to the claims. It appears that such search and consideration has not been carried out by the Examiner at this point in time, due to related assertions and rejections under 35 U.S.C. § 112. Applicant requests clarification, and submits that a full and fair examination of the claimed invention is appropriate. In addition, the Examiner suggests that the previous rejections continue to be appropriate. However, this is unclear. Specifically, the Examiner states "the applied prior arts in combinatory seem to have all limitations of current claim language." See 7/31/07 Office Action, Page 13. (emphasis added) Applicant requests clarification of these statements, and appropriate examination of the existing claims if this has not been carried out.

V. Summary and Conclusion

Applicant submits that all pending claims are allowable over the art of record and respectfully requests that a Notice of Allowance be issued in this case. In the event a telephone conversation would expedite the prosecution of this application, the Examiner may reach the undersigned at 612-607-7387.

If any additional fees are due in connection with the filing of this paper, then the Commissioner is authorized to charge such fees including fees for any extension of time, to Deposit Account No. 50-1901 (Docket 14862-323).

Respectfully submitted,



Craig Lervick, Reg. No. 35,244
Customer No. 34205

OPPENHEIMER WOLFF & DONNELLY LLP
45 South Seventh Street, Ste. 3300
Minneapolis, MN 55405
Phone: 612-607-7387
Fax: 612-607-7100
E-mail: CLerick@oppenheimer.com